

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6968

Joint Petition of TelCove of Vermont, Inc., and	)	
Mountain Cable Company, L.P., Better TV, Inc. of	)	Hearing at
Bennington, Multi-Channel T.V. Cable Company, Lake	)	Montpelier, Vermont
Champlain Cable Television Corporation, and	)	July 21, 2004
FrontierVision Operating Partners, L.P. pursuant to	)	
30 V.S.A. §§ 109 and 232 for consent to transfer fiber	)	
optic cables and other properties	)	

Order entered: 8/6/2004

PRESENT: John P. Bentley, Esq.  
Hearing Officer

APPEARANCES: John H. Marshall, Esq.  
Downs Rachlin Martin, PLLC  
for TelCove of Vermont, Inc.

Lisa N. Birmingham, Esq.  
Adelphia Communications Corporation  
for Mountain Cable Company, L.P., Better TV, Inc. of Bennington,  
Multi-Channel T.V. Cable Company, Lake Champlain Cable  
Television Corporation, and FrontierVision Operating Partners,  
L.P., all d/b/a Adelphia Cable Communications

Dixie Henry, Esq.  
for the Vermont Department of Public Service

**I. INTRODUCTION**

This docket involves a joint petition filed by TelCove of Vermont, Inc., f/k/a Adelphia Business Solutions of Vermont, Inc., d/b/a TelCove (hereinafter referenced as "TelCove-Vermont"), and Mountain Cable Company, L.P., Better TV, Inc. of Bennington, Multi-Channel T.V. Cable Company, Young's Cable TV Corp., Lake Champlain Cable Television Corporation, and FronterVision Operating Partners, L.P. (hereinafter referenced individually as an "ACC Entity" and collectively as the "ACC Entities") for consent, pursuant to 30 V.S.A. §§ 109 and

232, to transfer certain Vermont property in connection with the settlement of outstanding claims in bankruptcy proceedings involving the parties.

On May 18, 2004, TelCove-Vermont and the ACC Entities filed a Joint Petition with the Public Service Board (the "Board"), pursuant to 30 V.S.A. §§ 109 and 232, requesting Board consent to the transfer of certain cable assets from TelCove-Vermont to the ACC Entities pursuant to a Master Reciprocal Settlement Agreement ("MRSA") between the parties, in connection with the settlement of certain contested issues in the parties' respective bankruptcy proceedings. Also filed with the Joint Petition were the pre-filed testimony and exhibits of Mark Long on behalf of TelCove-Vermont and Jason Holmberg on behalf of the ACC Entities.

On June 9, 2004, TelCove-Vermont and the ACC Entities filed an Amended Joint Petition stating that the conveyance of assets from the ACC Entities to TelCove-Vermont in connection with the MRSA involved less than 10 % of ACC Entities' property (collectively or individually) located within the state and actually used in or required for public service, but also requesting Board consent to MRSA-required transfers of property by certain of the ACC Entities to TelCove-Vermont, pursuant to 30 V.S.A. §§ 109 and 232, reserving all rights to contest jurisdiction. In support of the Amended Joint Petition, the ACC Entities submitted the pre-filed testimony of Mark Forrest and Exhibits I and II, which were submitted under seal pursuant to a March 17, 2004, Protective Order.<sup>1</sup>

---

1. To avoid the necessity of filing annual petitions for protective orders, the March 17, 2004, Protective Order maintains as confidential "any and all Annual Fiber Run and Node Location Maps" and all information therein, filed with the Department and Board pursuant to Condition 18 of the Company's CPG and the Stipulation and Settlement between Adelphia and the Vermont Department of Public Service in Dockets 6656 and 6877. Dockets 6656 and 6877, Order of 3/17/04 at 2. Exhibits I and II show the Condition 18 Map overlaid with additional information from relevant MRSA Schedules; both maps depict the locations of the statewide fiber runs. Tr. 7/20/04 at 14–18. (Birmingham). Exhibit III depicts an enlarged segment of the Condition 18 map overlaid with additional MRSA information. *Id.* At the July 20, 2004, hearing, there was discussion as to whether Adelphia could rely on the March 17, 2004, Protective Order to protect Exhibits I–III for purposes of Docket 6968. *Id.* at 22–30. Adelphia asserted that Exhibits I–III were entitled to protection under the March 17, 2004, Protective Order because the exhibits were modified versions of the Condition 18 Map and that protection was essential to protect the integrity and reliability of the systems. *Id.* at 24–26. The parties agreed that if a public records request is made for the exhibits, then Adelphia would be notified and given an opportunity to object to disclosure of the exhibits and move for protection at that time. *Id.* at 27–30. The parties further agreed that the documents will be held as confidential and not released absent a further determination from the Board. *Id.* at 30. The Hearing Officer so ordered. *Id.*

On June 28, 2004, the ACC Entities filed certain revised Schedules to the MRSA, which were originally attached as part of Exhibit A to the Joint Petition and Exhibit III reflecting non-material corrections to the description of assets transferred under the MRSA based on due diligence review and negotiated resolution by the parties. Exhibit III was also filed under seal pursuant to the March 17, 2004, Protective Order. By letter dated June 30, 2004, TelCove-Vermont joined in the ACC Entities' submission of the amended exhibits.

On July 7, 2004, in response to a Board request, the Vermont Department of Public Service ("Department") filed a letter providing its recommendation as to Board consent for the subject transactions. The Department letter analyzed the proposed transactions separately and within the context of Adelphia Communications Corporation's (hereinafter referred to as "Adelphia") obligations as established in its Certificates of Public Good and by the Board in Dockets 6101 and 6223 and recommended that the Board consent to transfers without hearing or investigation, subject to the understanding that the transfers will not impair Adelphia's capability to meet the obligations established by its ACC Entity Certificates of Public Good and the Board's Orders in Dockets 6101 and 6223.

On July 21, 2004, I conducted a hearing on the Amended Joint Petition at which TelCove-Vermont and the ACC Entities presented witnesses for examination.

Under 30 V.S.A. Sections 109 and 232, the Board may consent to the proposed transfer of assets under the MRSA upon a finding that the proposed transfers will promote the general good of the state. Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board, and I recommend that the Board issue the requested approvals under Sections 109 and 232.

## **II. FINDINGS**

1. TelCove-Vermont, a "company" within the meaning of Section 201 of Title 30 of the Vermont Statutes Annotated, provides intrastate telecommunication services as defined under Subsection (5) of Section 203 thereof and as such is subject to the Vermont Public Service Board's jurisdiction. Am. Joint Pet. at 1.

2. TelCove-Vermont is a wholly-owned subsidiary of TelCove, Inc., f/k/a Adelphia Business Solutions, Inc., d/b/a TelCove, a corporation organized under the laws of the State of Delaware (hereinafter referenced as "TelCove"). Am. Joint Pet. at 2.

3. Each ACC Entity is a "company" within the meaning of Subsection (3) of Section 501 of Title 30 of the Vermont Statutes Annotated, operates cable-television systems as defined under Subsection (3) of Section 501 thereof under certificates of public good issued by the Board and as such is subject to the Board's jurisdiction. Am. Joint Pet. at 2.

4. The ACC Entities are direct or indirect, wholly-owned or -controlled subsidiaries of Adelphia, a corporation organized under the laws of Delaware. Am. Joint Pet. at 2.

5. On December 3, 2003, TelCove and Adelphia entered into the MRSA to settle claims arising from separate bankruptcy proceedings concerning both entities. Am. Joint Pet. at 2; Joint Exhibit A.<sup>2</sup>

6. The MRSA is part of a larger settlement involving TelCove and Adelphia, which resolved outstanding issues between and among respective bankruptcy proceedings involving each and their respective affiliates, eliminated the remaining obstacle to TelCove's successful emergence from bankruptcy and helped clear the path for Adelphia and its subsidiaries to exit bankruptcy unhindered by costly and protracted litigation involving the TelCove estates. Am. Joint Pet. at 2.

7. The settlement consisted of two separate agreements, the MRSA and additionally a Global Settlement Agreement that does not involve Vermont assets (collectively, the "Settlement Agreements") and that together effect both (i) the operational separation of various shared assets and services between TelCove and Adelphia and (ii) global settlement of claims of the TelCove debtors (and their estates) against the Adelphia debtors plus claims of the Adelphia debtors (and their estates) against the TelCove debtors. Am. Joint Pet. at 2–3.

8. The U.S. Bankruptcy Court for the Southern District of New York approved the settlement between the parties, including the Settlement Agreements, on March 23, 2004, in TelCove's Chapter 11 proceedings in Case No. 02-11389 (REG). Am. Joint Pet. at 3.

---

2. References to Joint Exhibit A shall be to the MRSA and its annexes, exhibits, and schedules, filed with the Joint Petition as amended by the ACC Entities' filing dated June 28, 2004.

9. The MRSA confirms and validates the ownership and operational separation of certain shared assets in various geographical areas where both Adelphia and TelCove and their respective subsidiaries have conducted operations. Am. Joint Pet. at 3; see Joint Exhibit A (Agreement, Annex I, the Reciprocal Asset Reconciliation Agreement, and Annex II, the Reciprocal Conveyance Agreement).

10. The MRSA also establishes a definitive framework governing the relationship of TelCove, Adelphia and their respective subsidiaries with respect to the future use and maintenance of certain of these assets. Am Joint Pet. at 3; see Joint Exhibit A (Agreement, Annexes III-VI — the Reciprocal IRU Agreement (hereinafter referred to as "IRU Agreement"), Reciprocal Sheathing and Overlash Agreement, Reciprocal Maintenance Agreement and Reciprocal Collocation Agreement).

11. The Vermont assets that are the subject of the MRSA are predominately long-haul fibers and related components such as fiber network, conduit, overlash rights, land usage, collocation space, power and network-maintenance services of regional systems that provide service between local systems and, in some cases, local network systems that are integrated into existing network assets. Am. Joint Pet. at 3.

12. The assets referenced in the MRSA include certain fiber-cable plant and related facilities located in Vermont; specifically, pursuant to the MRSA and subject to obtaining necessary regulatory approval and third-party consents, TelCove-Vermont will transfer to various ACC Entities ownership in fiber-optic cables and facilities located in and connecting the Bennington, Burlington, Manchester, Rutland, White River Junction and Williston market areas, and the ACC Entities will transfer to TelCove-Vermont (i) ownership of or the indefeasible right to use specific lateral fibers in the Bennington, Burlington, and Rutland market areas and (ii) ownership of or the indefeasible right to use certain market fibers located in fiber sheaths owned or to be owned by the ACC Entities in Bennington, Burlington, Montpelier, Rutland, Springfield, and Waterbury market areas. Am. Joint Pet. at 3–4; see Joint Exhibit D (Annex II, Schedules 2.1, 2.2, 3.1, and 3.2) for descriptions and locations of the Vermont fiber segments.

13. The assets being transferred to the ACC Entities by TelCove-Vermont under the Agreement constitute a transfer of property of ten percent or more of TelCove-Vermont's

property located within Vermont and used in or required for public service, which requires the Board's advance consent under Section 109 of Title 30 and a Board finding that the transfer of property will be consistent with the general good of the state. Am. Joint Pet. at 4.

14. TelCove-Vermont is a competitive, local-exchange carrier serving governmental, institutional, health-care and other businesses in Vermont, and it operates a statewide network of fiber-optic telecommunications facilities serving about 900 customer locations, operating approximately 15,000 access-line equivalents, employing thirty-five employees in Vermont and having gross revenues in Vermont during 2003 of approximately \$17 million. Long pf. at 7.

15. TelCove-Vermont offers a competitive alternative to incumbent, local-exchange carriers and other providers through a broadband network that is available throughout the state and, in addition, provides significant services to the State of Vermont. Long pf. at 7.

16. TelCove's successful reorganization will allow TelCove and its subsidiaries including TelCove-Vermont, as financially-stronger companies overall, to continue to offer reliable, competitive, facilities-based services as an alternative to the incumbent service provider in Vermont, as part of a robust, public-switched network, while clarifying the ownership of various respective network facilities, thus allowing TelCove-Vermont to implement its business plan which is to provide Vermont customers with a competitive choice in their telecommunications services. Am. Joint Pet. at 5; Long pf. at 7.

17. By transferring ownership of the long-haul network to certain of the ACC Entities, TelCove-Vermont has given up some of its capacity to expand by using additional strands in the network not in use today. Tr. 7/20/04 at 33–35 (Frost).

18. TelCove-Vermont will retain sufficient capacity, however, to meet the current and future needs of its subscribers: Under the IRU Agreement (Annex III to the MRSA), for example, the ACC Entities will provide TelCove-Vermont with indefeasible rights to use ("IRUs") not only what it has been using to date but also at least two additional fiber counts in various segments of the statewide, long-haul network. *Id.* at 33 (Frost).<sup>3</sup>

---

3. The fiber count in each segment to be conveyed varies. Using numbered exhibits, Joint Exhibit D, Schedule 2.1 (ACC Acquired Assets) describes the assets (long-haul and total fiber count within each segment) to be conveyed from TelCove-Vermont to the ACC Entities. Joint Exhibit D, Schedule A (IRU Agreement) describes the assets

(continued...)

19. TelCove-Vermont may also expand by other means, such as adding electronics to increase the amount of data that may be transmitted over the fiber strands it retains the right to use or by constructing new facilities. *Id.* at 42–43 (Frost).

20. TelCove-Vermont's conveyance of the long-haul network to the ACC Entities will benefit ACC Entities. Historically, the ACC Entities relied on the lease and use of certain of TelCove-Vermont's assets, most notably the long-haul, fiber-optic cables, to fulfill its obligations to the State and subscribers. Holmberg pf. at 5.

21. The fiber-optic plant and related facilities that will be conveyed to the ACC Entities by TelCove-Vermont pursuant to the MRSA will allow Adelphia to own and operate material plant segments that it is currently leasing from TelCove. Am. Joint Pet. at 6.

22. The lease will be extinguished by the MRSA contingent upon the Board's approval and the effective dates of the MRSA and the six Annex agreements with respect to the Vermont assets. Holmberg pf. at 5.

23. The ACC Entities will be able to reduce their reliance on third-party carriers for the long-haul transport of programming and other communications. Am. Joint Pet. at 6; Holmberg pf. at 7–8.

24. The ACC Entities represent that the proposed conveyance from the ACC Entities to TelCove-Vermont of assets and of rights in certain assets constitute less than 10% of ACC Entities' property (collectively or individually) located within the state and actually used in or required for public service; notwithstanding this representation and reserving all rights as to jurisdiction under 30 V.S.A. §§ 109 and 232, the ACC Entities have requested that the Board consent to the proposed conveyance of assets and of rights in certain assets from ACC Entities to TelCove-Vermont. Am. Joint Pet. at 5.

25. Adelphia, the parent company of the ACC Entities, is the fifth largest cable company in the United States with more than 5.3 million residential customers in 30 states, which through

---

3. (...continued)  
(fiber count) for which TelCove-Vermont will receive an indefeasible right of use by segment. Exhibit I combines the information in these two schedules and additional information to ascertain and depict the resulting fiber count allocation for TelCove-Vermont, the ACC Entities, and other third parties by segment by location on the long haul. Exhibit III, also filed under seal pursuant to the March 17, 2004, Protective Order, reflects the revised fiber allocation and corrected locations of the northwest segment of the long haul.

its eight Vermont operating companies provides cable-television services to approximately 112,000 customers in Vermont and high-speed Internet access to approximately 33,000 customers in Vermont. Am. Joint Pet. at 5; Holmberg pf. at 7.

26. The ACC Entities represent that the proposed conveyance to TelCove-Vermont will have no appreciable impact on ACC Entities' Vermont subscribers or on ACC Entities' ability to meet their respective certificate of public good obligations and specifically their ability to provide a statewide interconnect and to complete line extensions committed to and required by the Board's Order in Dockets 6656 and 6877. Am. Joint Pet. at 6.

27. The conveyance of Adelphia assets to TelCove-Vermont will not affect the ability of the ACC Entities to provide service to subscribers. Tr. 7/20/04 at 63 (Forrest).

28. Such assets are currently in use by TelCove-Vermont, and therefore ACC Entities do not rely on these assets to support existing or future services. Forrest pf. at 3–4.

29. The IRU Agreement will not adversely impact Adelphia's ability to provide current or future services to subscribers. Forrest pf. at 4–5.

30. Under the IRU Agreement, the ACC Entities will retain not only what they have been using to date, but also at least two and up to twenty-four additional fiber counts in various segments of the long-haul fiber cable. Forrest pf. at 5.

31. Accordingly, the ACC Entities will have access to greater capacity and, through ownership of the statewide long-haul fibers, increased ability to control future use of remaining fibers. Am. Pet. at 6.

32. The conveyance of assets from ACC Entities to TelCove-Vermont will not adversely affect Adelphia's ability to meet its line-extension obligations. Forrest pf. at 6.

33. The bulk of assets to be conveyed are located in already-developed areas, principally city areas such as Montpelier, Burlington, Rutland, and Bennington. Am. Joint Pet. at 4.

34. It is apparent from Exhibit II that the Schedule 3.1 assets are not in close proximity to the line extensions. Forrest pf. at 6.<sup>4</sup>

---

4. See Exhibit II, which depicts Adelphia's existing foot print including the statewide fiber ring, the Docket 6445 line extensions, and the Schedule 3.1 assets.



35. Exhibit II also reveals that there is no direct connectivity between the long-haul fibers and the line extensions. Forrest pf. at 6–7; tr. 7/20/04 at 52–53 (Forrest).

36. Long-haul fibers are used to connect transport head ends together, not to feed the fiber-optic nodes that are used to feed customers. Forrest pf. at 7.

37. The MRSA should not affect the ability of ACC Entities to provide a statewide interconnect: Adelphia's Vermont systems, and head ends specifically, are already interconnected. *Id.* at 7–8.

38. To enable Adelphia's Access Management Organizations to share PEG programming from point to point or on a statewide basis, in other words to satisfy its obligations under the Board's Order in Docket 6101, Condition 32, Adelphia intends to rely on this existing system and soon to be upgraded Docsis 2.0 platform. *Id.*

39. The assets to be conveyed to TelCove-Vermont are currently used by TelCove-Vermont, not an ACC Entity; the long-haul fibers for which TelCove-Vermont will be granted an IRU are either currently in use by TelCove or unused by Adelphia's Vermont systems. *Id.* at 8.

40. As such, Adelphia does not currently rely on these assets to support the existing interconnection or to deliver or support video or data services. *Id.*

41. Vermont consumers will benefit from the implementation of the MRSA and associated transfer of assets, as the MRSA allows TelCove and Adelphia and their respective subsidiaries to resolve outstanding claims in bankruptcy and advance both entities' reorganization plans. Am. Joint Pet. at 6–7.

42. The transactions will be transparent for existing Vermont consumers because the resulting networks will retain their existing capacities and sufficient additional capacity to serve the customers. Am. Joint Pet. at 7.

43. In addition to confirming and validating certain ownership interests in various shared assets, the transactions will also formalize the terms for future use and maintenance of the facilities going forward. Am. Joint Pet. at 3.

44. As such, implementation of the Agreement, and completion of the transfer of property and conveyance of rights of such property from TelCove-Vermont to the ACC Entities

and from ACC Entities to TelCove-Vermont contemplated thereby, will promote the general good of the state.

### **III. CONCLUSION**

The evidence in this proceeding demonstrates, and I find, that the proposed transfer of property and rights under the MRSA from TelCove-Vermont to certain of the ACC Entities and from certain of the ACC Entities to TelCove-Vermont promotes the general good of the state. In reaching this conclusion I rely on the testimony and representations of Adelphia that the proposed transactions will not impair its ability to fulfill all its obligations established by its Certificates of Public Good and the Board's Orders in Dockets 6101/6223, 6656, and 6877. Accordingly, I recommend that the Board find that the proposed transfer promotes the general good of the State of Vermont and issue an order to that effect.

Service of this Proposal for Decision in accordance with 3 V.S.A. § 811 has been waived by all the parties.

Dated at Montpelier, Vermont, this 6<sup>th</sup> day of August, 2004.

s/John P. Bentley

John P. Bentley, Esq.  
Hearing Officer

**IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings and Conclusions of the Hearing Officer are adopted.
2. The Board hereby consents to and approves the proposed transfer of certain property and rights specified in the MRSA from TelCove-Vermont to the ACC Entities (as defined above in this decision) and from such ACC Entities to TelCove-Vermont, pursuant to 30 V.S.A. §§ 109 and 232, and finds that the same will be consistent with and promote the general good of the State of Vermont. A certificate of our consent will accompany this Order.

Dated at Montpelier, Vermont, this 6<sup>th</sup> day of August, 2004.

<u>s/Michael H. Dworkin</u>	)	
	)	
	)	PUBLIC SERVICE
<u>s/David C. Coen</u>	)	
	)	
	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: August 6, 2004

ATTEST: s/Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*